Massachusetts Universal Health Care Law

This guide answers some questions that employers may have when implementing the new Massachusetts Universal Health Care Law. The law requires most employers with more than 10 employees to either contribute to the cost of health insurance coverage for their employees or make a payment to the Commonwealth. Only some of the employer obligations have been spelled out with reasonable clarity – the Commonwealth has yet to issue regulations implementing many aspects of the law. In addition, significant questions remain as to whether certain parts of the law are legal. However, until a court rules that the law, or a part of it, isn’t legal, employers must comply with its provisions.

Q. 1 What are the basic components of the law?

A. 1 The law consists of three major features:
   a. Fair share contribution;
   b. Free rider surcharge; and
   c. Health insurance responsibility disclosure (“HIRD”) form.

Q. 2 Are all the components of the law already effective?

A. 2 No. The fair share contribution obligations are in effect. However, the free rider surcharge and the HIRD form requirements have been delayed.

Employers Covered by the Universal Health Care Law

Q. 3 Which employers are covered by the new law?

A. 3 All employers doing business in Massachusetts, so long as they employ 11 or more full-time-equivalent employees. These employers are covered regardless of whether they provide any health insurance, and regardless of whether the plans they offer are self-insured or fully insured.

Q. 4 How do I determine whether an employer employs at least 11 full-time-equivalent employees?

A. 4 A full-time employee is an employee who is regularly scheduled to work at least 35 hours per week. For purposes of this calculation, an employer looks at the 12 months starting on October 1st of each year.

Q. 5 Do we include seasonal employees in this calculation?

A. 5 No. However, to be considered a seasonal employee, the individual must:
a. Be hired as a seasonal employee by a “seasonal employer” during the employer’s seasonal period and its seasonal operations for a specific temporary seasonal period;

b. Be notified by the Massachusetts Division of Unemployment Assistance that he/she is performing seasonal services for a seasonal employer;

c. Be employed no earlier than the beginning of the seasonal period and work no later than the end of the seasonal period; and

d. Work no more than 16 weeks in the 12-month period.

Q. 6 Are temporary employees included?

A. 6 No. To be considered temporary, workers (whether full-time or part-time) must explicitly be temporary and they cannot work more than 12 consecutive weeks in the 12-month period starting on October 1st. The regulations don’t define the word “explicitly.”

Q. 7 Are independent contractors included?

A. 7 No. However, the definition of an independent contractor is vague and an employer should not rely on this exception without legal advice.

The Fair Share Contribution Requirement

Q. 8 What are an employer’s obligations under the fair share contribution part of the law?

A. 8 Every employer must either make a “fair and reasonable premium contribution” toward the health insurance of its employees or pay a “fair share contribution” to the Commonwealth.

Q. 9 How much is the “fair share contribution”?

A. 9 The Commonwealth has not determined this amount, but it will not be more than $295 per employee per year.

Q. 10 An employer doesn’t have to make a “fair share contribution” if it makes a “fair and reasonable premium contribution” toward the health insurance costs of its employees. What is a “fair and reasonable premium contribution”?

A. 10 There are two ways an employer can satisfy the fair and reasonable contribution requirement. The first is referred to as the “Primary Test” or “25% Test.” The second is called the “Secondary Test” or “33% Test.”
Q. 11 What is the Primary Test?

A. 11 If at least 25% of the employer’s full-time employees are enrolled in the employer’s group health plan, then the employer passes the Primary Test.

Q. 12 How do I calculate the percentage of employees enrolled in the plan?

A. 12 You divide the total number of annual payroll hours of your full-time employees (meaning employees who are regularly scheduled to work more than 35 hours per week) enrolled in your health plan by the total annual payroll hours of all your full-time employees.

Q. 13 Do I include seasonal employees, temporary employees, and independent contractors in this calculation?

A. 13 No.

Q. 14 If some of my employees receive their health insurance from their spouse’s plan, can I count them as employees who are enrolled in my health plan?

A. 14 No. These employees must be included in the denominator of the calculation, but they are not included in the numerator.

Q. 15 How much do I have to pay toward the group premium for each employee to satisfy the primary test?

A. 15 There is no minimum amount. However, the reality is that most health insurance carriers and stop loss carriers won’t write a group health policy unless the employer pays at least 50% of the premium. However, certain group plans, such as supplemental medical plans, limited hospital indemnity policies, “mini-med” programs, and limited scope vision or dental benefits if offered separately, will not qualify regardless of the amount of the employer’s premium contribution.

Q. 16 Many of the people who work at my company are employed by a leasing company with which I have a contract. The leasing company has the primary responsibility for personnel decisions, including hiring, firing and work-site placement. Do I need to include these workers in the numerator or denominator of my Primary Test calculation?

A. 16 No.

Q. 17 What is the Secondary Test?

A. 17 An employer satisfies the secondary test if it pays at least 33% of the premium cost of any group health plan offered by the employer for its full-time employees who work more than 90 days in a fiscal year.

Q. 18 When does the fair share contribution requirement start?
A. 18 It started on October 1, 2006.

Q. 19 What is the year that’s covered by the fair share contribution requirement?

A. 19 All the calculations are done based on a year starting on October 1\textsuperscript{st} and ending the following September 30\textsuperscript{th}.

The Free Rider Surcharge Requirement

Q. 20 What is the free rider surcharge?

A. 20 It is a surcharge imposed on an employer who is a “non-provider” as defined by the law.

Q. 21 How can I avoid being a “non-provider”?

A. 21 The final regulations defining this phrase have not been issued. However, it appears that an employer will avoid being a “non-provider” if it establishes a Section 125 salary reduction plan by July 1, 2007. In addition, the employer must have health insurance coverage available at work (through a group plan or a self insured plan) or, for employers with less than 51 employees, its Section 125 plan must allow employees to purchase health insurance coverage through a state agency (the Health Insurance Connector).

Q. 22 Are there any other instances where employers can avoid being “non-providers”?

A. 22 Yes. Employers with employees covered by a collective bargaining agreement will not be a “non-provider,” at least as to the employees covered by the agreement, and employers that participate in the Massachusetts Insurance Partnership, which provides subsidies for employer-provided health insurance for low-income individuals, will also be exempt from this surcharge.

Q. 23 Is any help available to my employees who can’t afford the health insurance premiums?

A. 23 Yes. If you have a group plan (insured or self-insured), employees whose earnings are less than 300\% of the Federal poverty level will be eligible for subsidies. Employees of smaller employers which don’t have their own group plan will also be eligible for subsidies.

Q. 24 At what point does a “non-provider” become subject to the surcharge?

A. 24 When employees and their dependents cumulatively use $50,000 or more of “state-funded” health services in a year. The “state-funded” health services are basically those services paid by the Commonwealth on behalf of persons who don’t have insurance. In addition, there must be a minimum number of claims made by employees and their dependents.
Q. 25 What is the amount of the surcharge?

A. 25 The surcharge will vary from 10% to 100% of the state-funded costs. The percentage of the assessment will be based on (a) the number of an employer’s FTEs; (b) the number of claims made by the employees and their dependents; (c) an employer’s failure to comply with the HIRD requirements; (d) whether the employer is a repeat offender; and (e) if the employer has a high percentage of full-time employees enrolled in the employer’s sponsored health insurance.

Health Insurance Responsibility Disclosure Form

Q. 26 What is the Health Insurance Responsibility Disclosure Form?

A. 26 Final regulations have not been issued, but it appears that this will be a form which the employer completes and submits to the Commonwealth so that the Commonwealth can determine whether the employer has to make a fair share contribution or is subject to the free rider surcharge.

Other

Q. 27 Does the new law make any changes in the definition of a “dependent” for health insurance purposes?

A. 27 Yes. For fully insured group health plans, the new law requires that the plan permit dependents to remain on their parents’ coverage until the earlier of (a) two years after the date on which they would otherwise lose dependent status under the Internal Revenue Code, or (b) the dependant reaches age 26.

Q. 28 Are there any tax issues that occur as a result of this new definition of a “dependent” for health insurance purposes?

A. 28 Yes. If a dependent receives coverage under the new definition at a time that the dependent is not a “dependent” as defined by the Internal Revenue Code, the employee who covers that dependent will have imputed income.

Q. 29 Do I need to tell my employees about the new definition of “dependent” and about the possible tax consequences?

A. 29 The law does not require any notice to employees, but you should speak to your ERISA counsel about your obligation to issue a Summary of Material Modification (“SMM”) or to include this change in your next Summary Plan Description (“SPD”)

Q. 30 Are there any anti-discrimination provisions under this new law?

A. 30 Yes. The law includes a requirement that employers provide coverage uniformly. In practice, this means that whatever coverage an employer offers, that coverage must be made available to all full-time employees without regard to their
compensation (e.g., you can’t offer an indemnity plan only to the higher-paid employees). It also means that you can’t pay a higher percentage of the premium for higher-paid employees (although you can pay a higher percentage for lower-paid employees).

It appears, however, that you can make the same fixed-dollar contribution for all employees and that you can make different percentage contributions for different plans. It isn’t clear whether different contribution levels for single and family coverage are permitted. However, you can make a higher contribution for employees who participate in company-sponsored health and wellness programs and in certain circumstances you can make greater contributions for longer service employees.

Q. 31 Are any plans or individuals not covered by these requirements?

A. 31 Yes. These non-discrimination provisions do not apply to self-insured plans, employees who reside outside of Massachusetts, and plans subject to collective bargaining agreements.

Q. 32 Are there any other non-discrimination obligations?

A. 32 Yes. Employers cannot discriminate against employees on the basis of (a) the employee’s receipt of free health care benefits from the Commonwealth; (b) the employee’s disclosure or reporting of the employer’s identify; (c) the employee’s completion of a health insurance responsibility disclosure form; or (d) “any other facts or circumstances relating to the ‘free rider surcharges’ assessed against the employer in relation to the employee.”

Q. 33 When do the non-discrimination provisions go into effect?

A. 33 They went into effect for all group plans that employers enter into on or after January 1, 2007. Employers who signed renewal agreements prior to that date do not have to comply with the non-discrimination provisions until the next renewal date.

Q. 34 What happens if an employee doesn’t participate in the group health plan we offer and doesn’t buy coverage through the Commonwealth?

A. 34 The employee will be subject to a financial penalty starting on July 1, 2007.

If you have questions or would like more information about K&L Gates’ Labor and Employment practice, please feel free to contact the authors:

Henry T. Goldman
Tel: 617.951.9156
Henry.Goldman@klgates.com

Stacy H. Barrow
Tel: 617.951.9178
Stacy.Barrow@klgates.com

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